

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BRIAN ROGERS,

Plaintiff

v.

MORAN TOWING & TRANSPORTATION CO., INC.,

Defendant

CIVIL ACTION NO. 04-11448-RCL

**AFFIDAVIT OF JAMES J. NEWMAN IN SUPPORT OF MOTION OF
DEFENDANT MORAN TOWING CORPORATION
TO TRANSFER THIS ACTION**

James J. Newman deposes and says as follows under the penalties of perjury:

1. I am Risk Manager for Moran Towing Corporation ("Moran").
2. True and accurate copies of the Report of Injury Claim forms that plaintiff Brian Rogers submitted to Moran are Exhibits A-1 and A-2 to this affidavit.
3. The tug JAMES TURECAMO's hailing port is Wilmington, Delaware, and it is based at a shipyard and tying-up facility in Staten Island (Richmond County), New York. When it is not at the shipyard in Staten Island, the tug is at whatever locations it is directed to by Moran's customers who require its services. The tug's crew ordinarily reports to the tug for duty at the shipyard in Staten Island, but if a crewmember is reporting for duty at a time when the tug is not at the shipyard, Moran tells the crewmember where the tug is working, and the crewmember reports to the tug at that location.

4. In addition to Mr. Rogers, who provided Moran a home address in Rhode Island, the same persons were serving as captain and crew on both February 12, 2003 and July 24, 2003. Their positions, names, addresses, and telephone numbers are set forth in the crew list that is Exhibit B to this affidavit. As may be seen from that list, the captain's residence is in Endwell, NY; the mate's is in Willow Grove, PA; the chief engineer's is in N. Fort Myers, FL; and the able-bodied seaman's is in Thomasen, ME.

5. According to the plaintiff's injury reports (Exhibits A-1 and A-2), his alleged injury on February 12, 2003 occurred at about 2345, or 11:45 p.m., and his alleged injury on July 24, 2003 occurred at about 11:30 a.m. The tug's log for those dates (true and accurate copies are Exhibits C-1 and C-2 to this affidavit) shows that the tug was at Glenwood Landing, Long Island, NY at the relevant time on February 12, 2003 and at Bergen Point, near Bayonne, NJ, at the relevant time on July 24, 2003. According to company records consisting of two emails, dated respectively February 13 and July 25, 2003 (true and accurate copies are Exhibits D-1 and D-2 to this affidavit), after the plaintiff reported each of the alleged injuries to the captain of the tug, the captain sent him for examination and treatment to St. Vincent's Hospital in Staten Island.

6. Moran paid the plaintiff's medical expenses in connection with his alleged injuries, and as far as I know from reviewing the bills that he or his medical providers submitted to Moran, the plaintiff did not seek or receive any medical care in Massachusetts at any time.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON THIS 23RD DAY OF DECEMBER 2004.

/S/JAMES J. NEWMAN
James J. Newman, Risk Manager